

REMARKS

I. Status of Claims

With entry of this amendment, claims 13-15, 20-26, 30-35, and 37 are pending.

Claims 1-12, 16-19, and 36 were previously cancelled.

Claims 20, 26, and 34 have been amended without prejudice or disclaimer.

Since all of these inventions are reasonably conveyed by the specification and original claims, no new matter is added herein.

II. Claim Rejections - 35 U.S.C. §102

Claims 13, 14, 20, 21, 22, 25, 26, and 34 are rejected under 35 U.S.C. §102 (b) as allegedly being anticipated by Vellturo et al (*Journal of Organic Chemistry*, 1966, 31(7), 2241-2244). See Office Action at page 2. Specifically, the Office alleges that Vellturo et al describe a starting material III which meets the structural limitations of the compounds in the instantly claimed preparations. See Vellturo et al at page 2243. The Office also alleges that Vellturo et al describes dissolving the diacid-diester in methanol on page 2244, second column. The Office thus concludes that the diacid-diester in methanol meets the limitations directed to the pharmaceutical preparation. Applicants respectfully disagree.

However, solely to expedite prosecution of this application and without in any way conceding to the propriety of this rejection, Applicants have amended claims 20, 26, and 34 to delete reference to those embodiments wherein n is 2, R₁ is hydroxyl and R₂ is OR₅ wherein R₅ is methyl.

Applicants also submit that the above amendments comply with the written description requirement. As indicated by MPEP 2173.05(i), "[a]ny negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims." See *in re Johnson*, 558 F.2d 1008, 1019, 195 USPQ 187, 196 (CCPA 1977). Here, Applicants exclude embodiments comprising a carbocyclic oligomer derived from methyl hydrogen fumarate, which is positively recited in the last paragraph at page 4 of the

specification as filed.

Applicants further maintain that the Velturo et al does not describe any pharmaceutical preparation, or any of the compounds encompassed by the current claims as amended. As such, Applicants respectfully request that this rejection be withdrawn.

III. Objections to Claims

Claims 15, 23, 24, 30, 31, 32, 33, 35, and 37 are objected to as allegedly being dependent upon a rejected base claim, which "would be allowable if rewritten into independent form including all of the limitations of the base claim and any intervening claims." See Office Action at page 3. Applicants respectfully submit that claims 35 and 37 are independent claims. Claim 37 is also indicated as allowable by the Office. Objections to claims 35 and 37 are thus improper and should be withdrawn.

Claims 15, 23, 24, 30, 31, 32, and 33 are dependent on either claim 20 or claim 26, directly or indirectly. As discussed above, the rejection of claims 20 and 26 should be withdrawn in view of the amendments to those claims. Accordingly, Applicants respectfully request withdrawal of this objection.

CONCLUSION


Applicants respectfully request that this amendment be entered by the Examiner, placing the claims in condition for allowance.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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